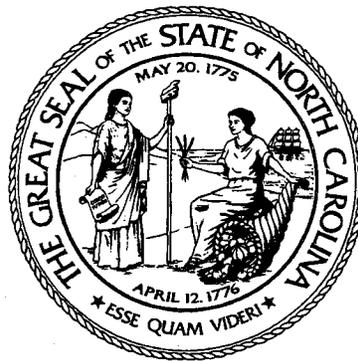


LEGISLATIVE RESEARCH COMMISSION

Property Issues Committee



REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA
1996 REGULAR SESSION

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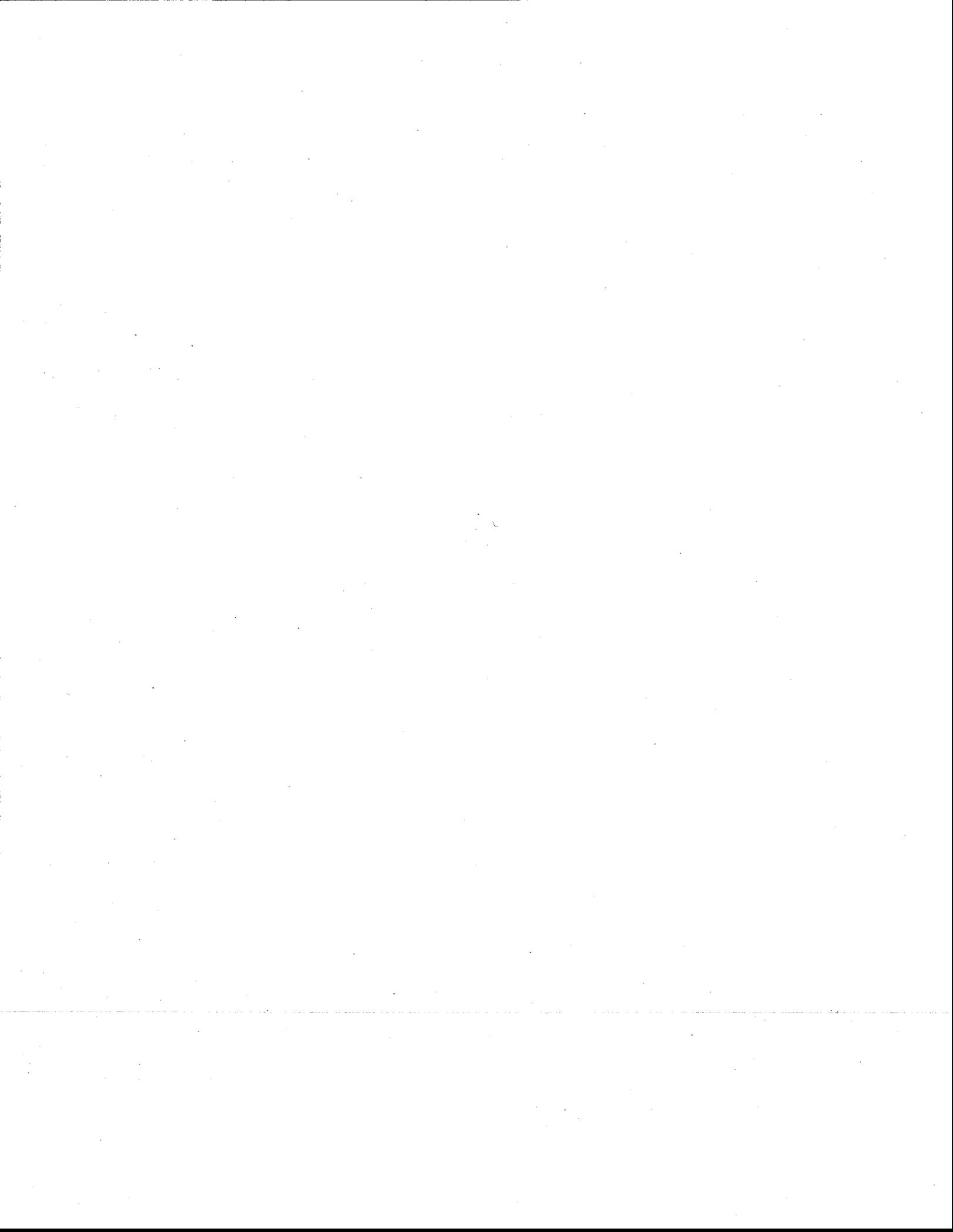
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1995-1996

LEGISLATIVE RESEARCH COMMISSION

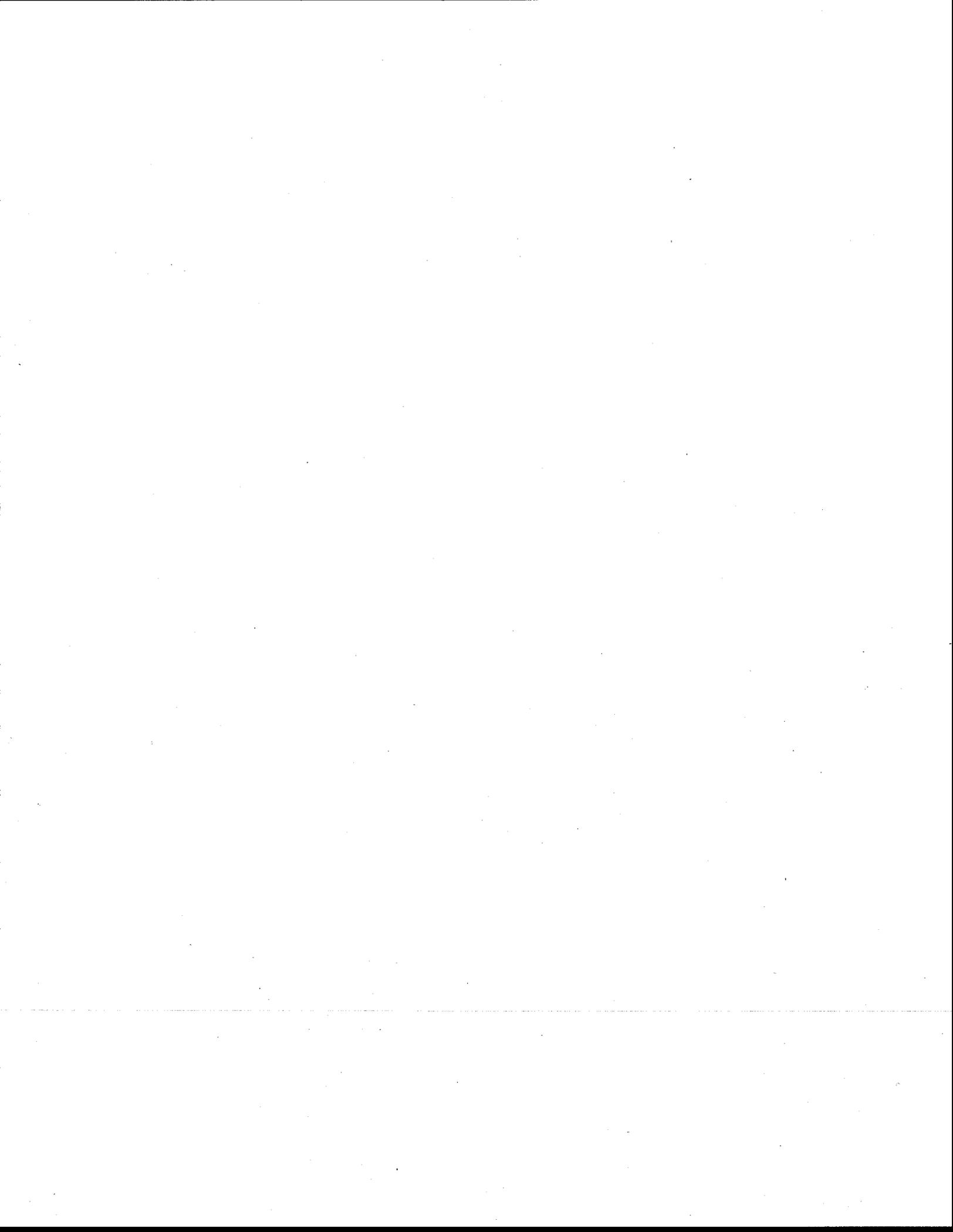
MEMBERSHIP

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the Senate
Marc Basnight, Cochair

Senator Frank W. Ballance, Jr.
Senator R. L. Martin
Senator Henry McKoy
Senator J. K. Sherron, Jr.
Senator Ed N. Warren

Speaker of the House of
Representatives
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Rep. Edd Nye
Rep. Gregory J. Thompson
Rep. Constance K. Wilson



PREFACE

The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is cochaired by the Speaker of the House and the President Pro Tempore of the Senate and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission, prompted by actions during the 1995 Session, has undertaken studies of numerous subjects. These studies were grouped into broad categories and each member of the Commission was given responsibility for one category of study. The Cochairs of the Legislative Research Commission, under the authority of G.S. 120-30.10(b) and (c), appointed committees consisting of members of the General Assembly and the public to conduct the studies. Cochairs, one from each house of the General Assembly, were designated for each committee.

The study of Property Issues was authorized by Section 2.1(18) of Chapter 542 of the 1995 Session Laws. Part II of Chapter 542 allows for studies authorized by that Part for the Legislative Research Commission to consider House Bills 73, 539, 597, and 660 in determining the nature, scope and aspects of the study. The relevant portions of Chapter 542 are included in Appendix A. The Legislative Research Commission authorized this study under authority of G.S. 120-30.17(1) and grouped this study in its Property Issues Grouping under the direction of Representative Larry Linney. The Committee was chaired by Senator Fletcher L. Hartsell, Jr. and Representative J. Sam

Ellis. The full membership of the Committee is listed in Appendix B of this report. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library at the conclusion of the committee's work.

COMMITTEE PROCEEDINGS

Please note: This section is intended to give a brief summary of the work of the Committee from February through April, 1996. More complete committee minutes are available from Committee Clerk Frances Wilson, (919) 733-0033 until December, 1996. After that date, a permanent notebook recording the work of the committee will be deposited in the legislative library.

Meeting on February 8, 1996

The Legislative Research Commission Property Issues Study Committee met for the first time at 10:00 a.m. on February 8, 1996 in Room 421 of the Legislative Office Building. The committee began its work with an overview of the laws governing the extraterritorial planning and zoning jurisdiction of cities in North Carolina, presented by Richard Ducker of the Institute of Government. The Committee next heard a presentation on North Carolina Annexation law from Mr. David Lawrence of the Institute of Government. The final speaker before the committee was Mr. Bill Thorp, noted Raleigh attorney in the area of municipal and DOT condemnation practices. The committee, during its discussion, identified several areas for further discussion at their next meeting, including tightening annexation standards, increasing county and citizen participation in the annexation process, and attorneys fees and evidence issues in municipal condemnation cases.

Meeting on March 7, 1996

The second meeting of the Legislative Research Commission Property Issues Study Committee was held on March 7, 1996 in Room 421 of the legislative Office Building. The Committee spent most of the meeting discussing a bill draft to: (1) allow attorney fees, and (2) broader evidence of value, including all appraisals, to be introduced in municipal condemnation cases. The committee was assisted in its discussion by Mr. Bill Thorp, of the Thorp Law Firm, Raleigh. Following this discussion, the co-chairs appointed subcommittees on the topics of Annexation, Extraterritorial jurisdiction, and Condemnation. These Committees were directed to begin meeting on March 21, 1996.

Meetings on March 21 and 22, 1996

The **SUBCOMMITTEE ON EXTRATERRITORIAL JURISDICTION** met on March 21, 1996 at 2:00 p.m. in Room 424 of the Legislative Office Building. The Committee heard from Mr. Marion Penny, Wake County developer, who discussed the negative effects of ETJ extension on his land; Mr. Melvin Watt, retired Chairman of the Planning and Zoning Board of Gastonia and Mr. Kyle Sonnenberg, Town Manager of Southern Pines, who reported positive working relationships between affected parties in their areas.

The **SUBCOMMITTEE ON CONDEMNATION** met on March 21 at 2:00 in Room 423 of the Legislative Office Building. The Committee discussed and approved draft providing for attorneys fees and broader introduction of valuation evidence in Chapter 40A condemnation proceedings, and began a discussion of the effect of similar legislation on DOT condemnation practices.

The **SUBCOMMITTEE ON ANNEXATION** held a five hour public hearing beginning at 6:30 p.m. in the Auditorium of the Legislative Building. The subcommittee listened to over fifty citizens from all over the state express their concerns about the State's annexation law. Representatives of several municipal governments expressed their support for the current annexation law, mentioning its importance to the economic vitality of cities. Many other citizens forcefully expressed opposition to involuntary annexation, and concern over city provision of services and abuses of annexation law technical standards. A full transcript of the meeting has been requested, and will be available from the committee clerk upon completion.

The **FULL COMMITTEE** met at 9:30 a.m. on March 22, 1996 in Room 423 of the Legislative Office Building. The Committee heard reports from each subcommittee, and requested legislation on extraterritorial jurisdiction and annexation for consideration at the next meeting.

Meetings on April 4, 1996

The **SUBCOMMITTEE ON EXTRATERRITORIAL JURISDICTION** met on April 4, 1996 at 10:00 a.m. in Room 424 of the Legislative Office Building. The Subcommittee discussed several proposed changes to the statutes, including county approval of ETJ extension, limits on city regulation in the ETJ, and new requirements for notice and appointment of representatives from the ETJ on planning boards/boards of adjustment. These proposals were forwarded to the full committee for further discussion.

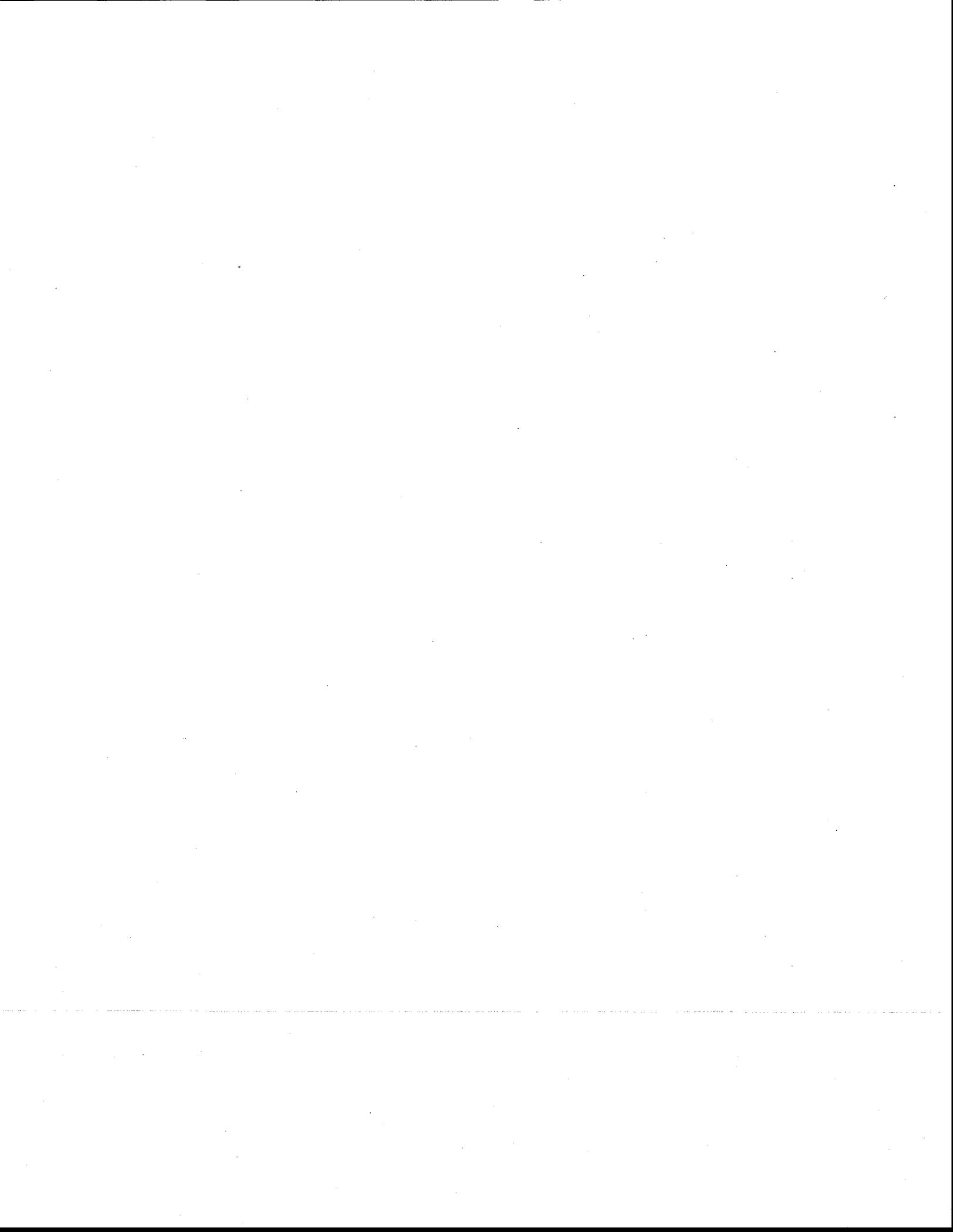
The **SUBCOMMITTEE ON CONDEMNATION** met on April 4, 1996 at 10:00 a.m. in Room 423 of the Legislative Office Building. The Committee reviewed a comparison of Chapter 40A (municipal) and Chapter 136 (DOT) condemnation law, and examined apparent statutory ambiguity in the law defining the rights of a condemnee to be returned excess property under Chapter 136.

The **SUBCOMMITTEE ON ANNEXATION** met on April 4, 1996 at 10:00 a.m. in Room 422 of the Legislative Office Building. The Subcommittee discussed draft legislation to require proposals to require county commissioner approval of annexation, and a proposal to change the technical requirements for annexation. The draft legislation affecting technical requirements was forwarded to the full committee for further discussion.

The **FULL COMMITTEE** met on April 4, 1996 at 2:00 p.m. in Room 421 of the Legislative Office Building. The Committee discussed and approved the legislation attached as Legislative Proposals I-IV.

Meeting on April 18, 1996

The full committee met at 10:00 a.m. on April 18, 1996 in Room 1228 of the Legislative Building to review and approve their report to the 1995 General Assembly (1996 Regular Session).



RECOMMENDATIONS

The Committee recommends the following to the 1995 General Assembly (Regular Session 1996), titled as follows. The texts of these proposals may be found in the appendix.

LEGISLATIVE PROPOSAL I --

A BILL TO BE ENTITLED AN ACT TO AMEND CHAPTER 40A GOVERNING CONDEMNATION TO AUTHORIZE AWARD OF ATTORNEYS FEES AND INTRODUCTION OF ANY EVIDENCE OF PROPERTY VALUE.

LEGISLATIVE PROPOSAL II --

A BILL TO BE ENTITLED AN ACT TO CHANGE THE LAWS GOVERNING ANNEXATION BY CITIES WITH A POPULATION OF 5,000 OR MORE.

LEGISLATIVE PROPOSAL III --

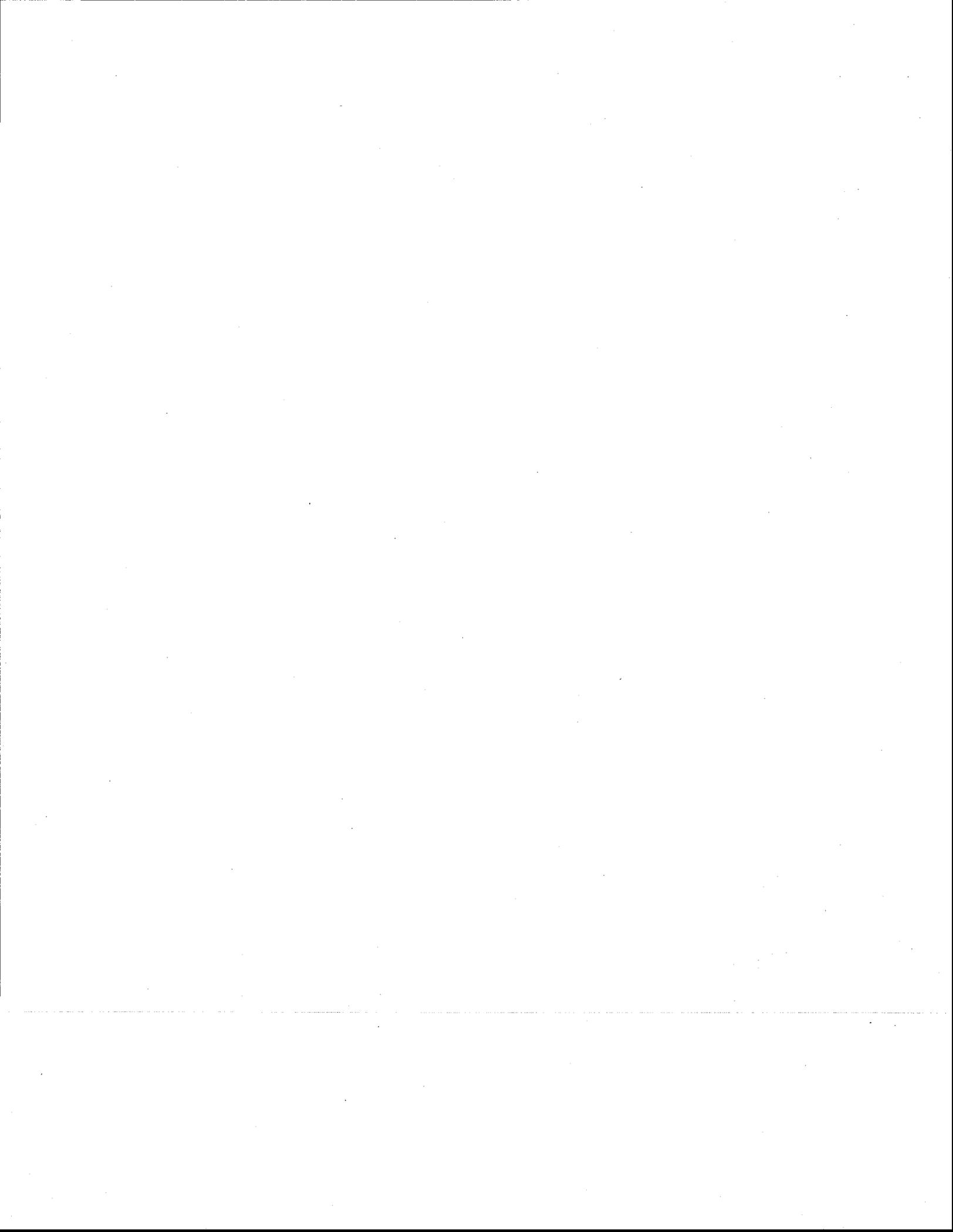
A BILL TO BE ENTITLED AN ACT TO CHANGE THE LAWS GOVERNING ANNEXATION BY CITIES WITH A POPULATION OF LESS THAN 5,000.

LEGISLATIVE PROPOSAL IV --

A BILL TO BE ENTITLED AN ACT TO REQUIRE FIRST CLASS MAIL NOTICE TO ALL PROPERTY OWNERS IN AN AREA PROPOSED FOR ADDITION TO A MUNICIPALITY'S EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION, PROPORTIONAL REPRESENTATION FOR RESIDENTS OF THE ETJ ON THE PLANNING AGENCY, AND A HEARING BEFORE COUNTY APPOINTMENT OF REPRESENTATION TO THE PLANNING AGENCY.

RECOMMENDATION V --

Deferral of water and sewer assessments until hook-up



APPENDIX A

CHAPTER 542

AN ACT TO AUTHORIZE STUDIES BY THE LEGISLATIVE RESEARCH COMMISSION, TO CREATE AND CONTINUE VARIOUS COMMISSIONS, TO DIRECT STATE AGENCIES AND LEGISLATIVE OVERSIGHT COMMITTEES AND COMMISSIONS TO STUDY SPECIFIED ISSUES, TO MAKE VARIOUS STATUTORY CHANGES, AND TO MAKE TECHNICAL CORRECTIONS TO CHAPTER 507 OF THE 1995 SESSION LAWS.

The General Assembly of North Carolina enacts:

PART I.-----TITLE

Section 1. This act shall be known as "The Studies Act of 1995".

PART II.-----LEGISLATIVE RESEARCH COMMISSION

Sec. 2.1. The Legislative Research Commission may study the topics listed below. When applicable, the 1995 bill or resolution that originally proposed the issue or study and the name of the sponsor is listed. The Commission may consider the original bill or resolution in determining the nature, scope, and aspects of the study. The topics are:

- ...
- (18) Property issues.
- a. Property rights (H.B. 597 - Nichols)
 - b. Extraterritorial jurisdiction representation (H.J.R. 73 - Ellis)
 - c. Annexation laws (H.B. 660 - Pulley; H.B. 539 - Sherrill)
 - d. Condemnation by government entities, including the condemnation process, fair market value for property, payment of condemnees' attorneys' fees and court costs, and related matters (Allred)

...

Sec. 2.9. Reporting Dates. For each of the topics the Legislative Research Commission decides to study under this act or pursuant to G.S. 120-30.17(1), the Commission may report its findings, together with any recommended legislation, to the 1996 Regular Session of the 1995 General Assembly, if approved by the cochairs, or the 1997 General Assembly, or both.

Sec. 2.10. Bills and Resolution References. The listing of the original bill or resolution in this Part is for reference purposes only and shall not be deemed to have incorporated by reference any of the substantive provisions contained in the original bill or resolution.

Sec. 2.11. Funding. From the funds available to the General Assembly, the Legislative Services Commission may allocate additional monies to fund the work of the Legislative Research Commission.

...

PART XXVI.-----EFFECTIVE DATE

Sec. 26.1. This act is effective upon ratification.

**PROPERTY ISSUES COMMITTEE
MEMBERSHIP
1995 - 1996**

LRC Member: Rep. Larry Linney
PO Box 7628
Asheville, NC 28802
(704) 254-7949

President Pro Tempore Appointments

Sen. Fletcher L. Hartsell, Jr., Cochair
PO Box 368
Concord, NC 28026-0368
(704) 786-5161

Sen. John H. Carrington
PO Box 30576
Raleigh, NC 27622

Mr. Dan Clodfelter
523 Clement Avenue
Charlotte, NC 28204

Mr. Webb Fuller
Town of Nags Head
PO Box 99
Nags Head, NC 27959

Mr. Franz Holscher
545 Owen's Drive
Gastonia, NC 28054

Sen. Fountain Odom
1100 South Tryon Street
Charlotte, NC 28203
(704) 372-4800

Mr. John M. Tyson
St. James Square, Suite 100
410 Ramsey Street
Fayetteville, NC 28301

Dean Judith Wegner
UNC School of Law
CB# 3380
Chapel Hill, NC 27599-3380

Speaker's Appointments

Rep. J. Sam Ellis, Cochair
3513 Auburn Knightdale Road
Raleigh, NC 27610
(919) 772-6434

Rep. Cary D. Allred
4307 Sartin Rd.
Burlington, NC 27217-7522
(910) 229-1980

Rep. Beverly Earle
312 South Clarkson Street
Charlotte, NC 28202
(704) 333-7180

Rep. John W. Hurley
PO Box 714
Fayetteville, NC 28302
(910) 483-6210

The Honorable Robert Northington, Jr.
931 Englewood Drive
Winston-Salem, NC 27106

Rep. Arlene C. Pulley
4715-H Edwards Mill Road
Raleigh, NC 27612
(919) 571-7414

Rep. Wilma M. Sherrill
PO Box 18561
Asheville, NC 28814
(704) 254-0991

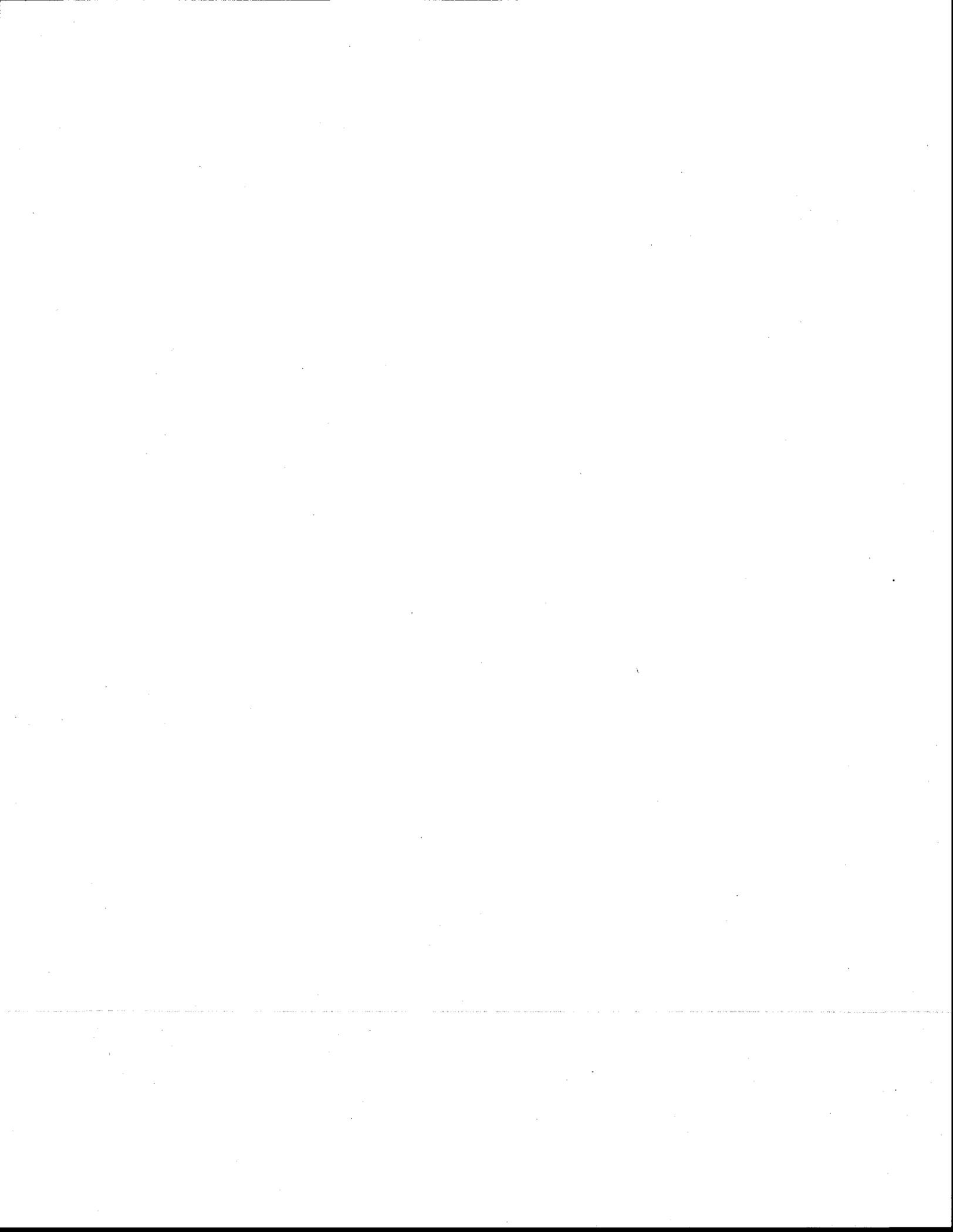
Rep. Larry W. Womble
1294 Salem Lake Road
Winston-Salem, NC 27107
(910) 784-9373

Staff:

Mr. Giles Perry
Research Division
(919) 733-2578

Clerk:

Ms. Frances Wilson
(919) 733-5821



LEGISLATIVE PROPOSAL I

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RWZ-008B

THIS IS A DRAFT 22-APR-96 09:28:00

Short Title: Condemnation changes.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND CHAPTER 40A GOVERNING CONDEMNATION TO AUTHORIZE
3 AWARD OF ATTORNEYS FEES, AND INTRODUCTION OF ANY EVIDENCE OF
4 PROPERTY VALUE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 40A-8 is amended by adding a new
7 subsection to read:
8 "(d) In addition to the other costs allowed under this
9 Chapter, in any action brought under this Chapter in which the
10 judgement awarded to the owner is an amount greater than:
11 (1) The highest formal offer of settlement made in
12 writing by the condemnor to the condemnee prior to
13 filing a petition under G.S. 40A-20, or
14 (2) the amount of the deposit under Article 3,
15 the court with jurisdiction over the action shall, after making
16 appropriate findings of fact, award each owner of the property
17 sought to be condemned a sum that, in the opinion of the court
18 based upon its findings of fact, will reimburse the owner for:
19 reasonable costs, disbursements, and expenses, including
20 reasonable attorney, appraisal, and engineering fees."

1 Sec. 2. Article 4 of Chapter 40A of the General
2 Statutes is amended by adding a new section to read:

3 "§40A-71 Evidence of value.

4 In any proceeding to determine the value of property
5 condemned under this Chapter,

6 (1) Any formal offer of settlement made in writing
7 by the condemnor to the condemnee prior to filing a
8 petition under G.S. 40A-20,

9 (2) The amount deposited under Article 3, or

10 (3) Any other written evidence of value of the
11 property, other than property tax valuation.

12 shall be produced upon motion of any party to the proceeding, and
13 shall be admissible into evidence."

14 Sec. 3. This act becomes effective October 1, 1996 and
15 shall apply to pending litigation.

SUMMARY
Condemnation changes
Draft 96-RWZ-008B

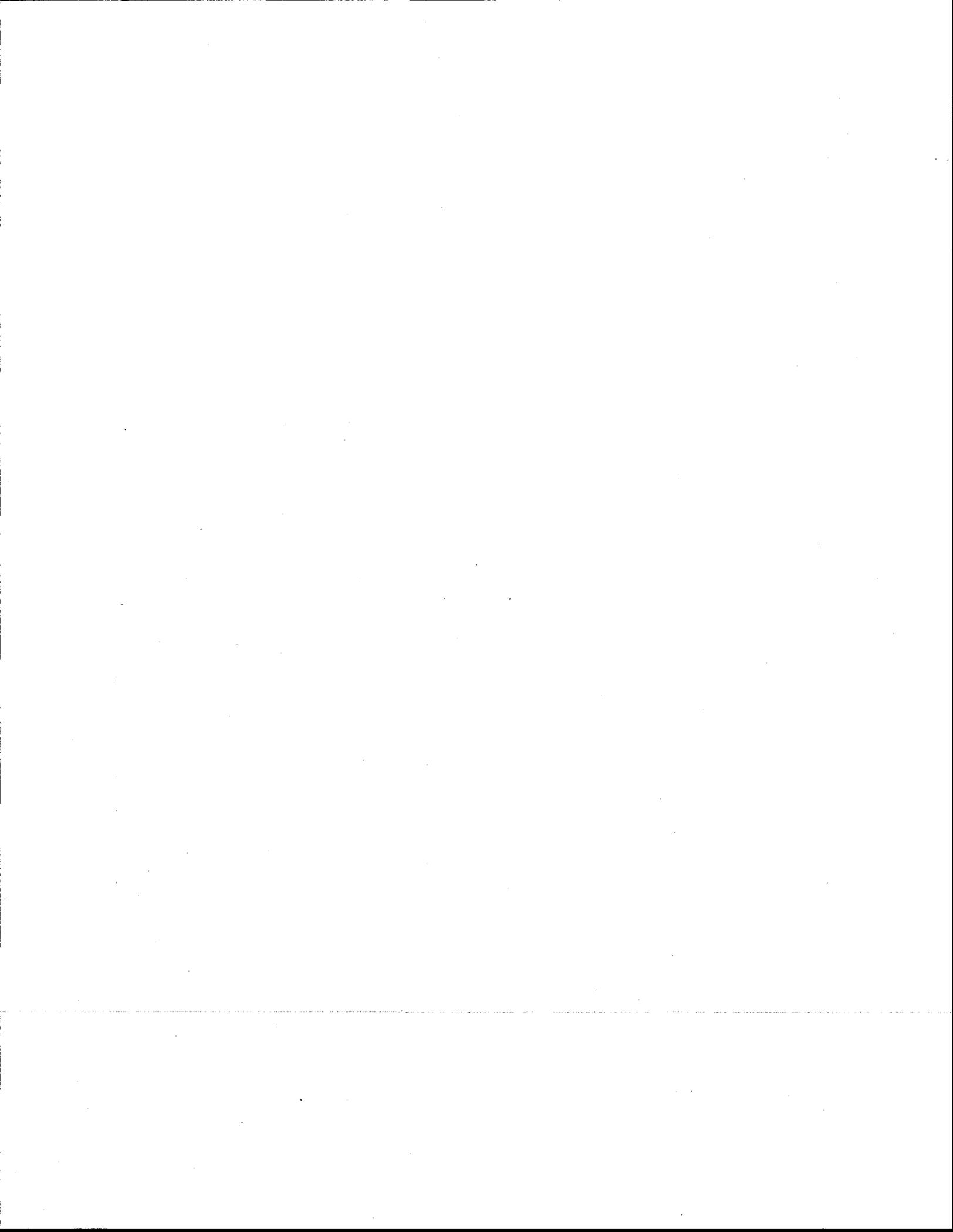
This bill amends the laws governing condemnation by municipalities and other private condemnors covered by Chapter 40A of the General Statutes.

SECTION 1 of the bill authorizes attorney's fees to be paid in Chapter 40A condemnation actions if a condemnee, in any action to determine just compensation for the condemned property, is awarded more than:

- the highest formal offer in writing prior to filing a petition; or
- the amount of the deposit by the condemning authority.

SECTION 2 of the bill allows additional evidence of the value of the condemned property to be introduced by either party in any proceeding brought to determine just compensation for the condemned property. Evidence of any formal offer of settlement made in writing, the amount deposited by the condemning authority, and any other written evidence of value of the property would be discoverable and admissible.

SECTION 3 of the bill provides that it would become effective October 1, 1996, and apply to pending litigation.



LEGISLATIVE PROPOSAL II

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RWZ-020D

THIS IS A DRAFT 22-APR-96 09:26:57

Short Title: Annexation Changes/Larger Cities. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE LAWS GOVERNING ANNEXATION BY CITIES WITH A
3 POPULATION OF FIVE THOUSAND OR MORE.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 160A-47 reads as rewritten:
6 "§ 160A-47. Prerequisites to annexation; ability to serve;
7 report and plans.
8 A municipality exercising authority under this Part shall make
9 plans for the extension of services to the area proposed to be
10 annexed and shall, prior to the public hearing provided for in
11 G.S. 160A-49, prepare a report setting forth such plans to
12 provide services to such area. The report shall include:
13 (1) A map or maps of the municipality and adjacent
14 territory to show the following information:
15 a. The present and proposed boundaries of the
16 municipality.
17 b. The present major trunk water mains and sewer
18 interceptors and outfalls, and the proposed
19 extensions of such mains and outfalls as
20 required in subdivision (3) of this section.

- 1 The water and sewer map must bear the seal of
2 a registered professional engineer.
- 3 c. The general land use pattern in the area to be
4 annexed.
- 5 (2) A statement showing that the area to be annexed
6 meets the requirements of G.S. 160A-48.
- 7 (3) A statement setting forth the plans of the
8 municipality for extending to the area to be
9 annexed each major municipal service performed
10 within the municipality at the time of annexation.
11 Specifically, such plans shall:
- 12 a. Provide for extending police protection, fire
13 protection, solid waste collection and street
14 maintenance services to the area to be annexed
15 on the date of annexation on substantially the
16 same basis and in the same manner as such
17 services are provided within the rest of the
18 municipality prior to annexation. A contract
19 with a rural fire department to provide fire
20 protection shall be an acceptable method of
21 providing fire protection. If a water
22 distribution system is not available in the
23 area to be annexed, the plans must call for
24 reasonably effective fire protection services
25 until such time as waterlines are made
26 available in such area under existing
27 municipal policies for the extension of
28 waterlines. A contract with a private firm to
29 provide solid waste collection services shall
30 be an acceptable method of providing solid
31 waste collection services.
- 32 b. Provide for extension of major trunk water
33 mains and sewer outfall lines into the area to
34 be annexed so that when such lines are
35 constructed, property owners in the area to be
36 annexed will be able to secure public water
37 and sewer service, according to the policies
38 in effect in such municipality for extending
39 water and sewer lines to individual lots or
40 subdivisions. If requested by the owner of an

1 occupied dwelling unit or an operating
2 commercial or industrial property in writing
3 on a form provided by the municipality, which
4 form acknowledges that such extension or
5 extensions will be made according to the
6 current financial policies of the municipality
7 for making such extensions, and ~~if such form~~
8 ~~is received by the city clerk not less than 30~~
9 ~~days before adoption of the annexation~~
10 ~~ordinance,~~ provide for extension of water and
11 sewer lines to the property or to a point on a
12 public street or road right-of-way adjacent to
13 the property according to the financial
14 policies in effect in such municipality for
15 extending water and sewer lines. The
16 municipality shall provide in writing a notice
17 to each owner of an occupied dwelling unit or
18 an operating commercial or industrial property
19 of the owner's right to make this request on
20 the provided form. If any such requests are
21 timely made, the municipality shall at the
22 time of adoption of the annexation ordinance
23 amend its report and plan for services to
24 reflect and accommodate such requests. If
25 water, sewer, or paving services specified in
26 the report for the area to be annexed are not
27 provided within two years of the effective
28 date of the annexation, the owner of property
29 that has not received the water, sewer, or
30 paving service shall be reimbursed for all ad
31 valorem taxes paid to the municipality, and
32 shall not be liable for future ad valorem
33 taxes until the services are provided.

34 c. If extension of major trunk water mains, sewer
35 outfall lines, sewer lines and water lines is
36 necessary, set forth a proposed timetable for
37 construction of such mains, outfalls and lines
38 as soon as possible following the effective
39 date of annexation. In any event, the plans
40 shall call for construction to be completed

- 1 within two years of the effective date of
2 annexation.
- 3 d. Set forth the method under which the
4 municipality plans to finance extension of
5 services into the area to be annexed.
- 6 e. Provide for paving all public roads within the
7 area to be annexed, which are both under the
8 control of the city and which meet the city
9 standards for paving, within two years of the
10 effective date of the annexation.
- 11 f. Provide a specific statement as to how the
12 city plans to provide the required services.
- 13 (4) A statement of the impact of the annexation on any
14 rural fire department providing service in the area
15 to be annexed and a statement of the impact of the
16 annexation on fire protection and fire insurance
17 rates in the area to be annexed, if the area where
18 service is provided is in an insurance district
19 designated under G.S. 153A-233, a rural fire
20 protection district under Article 3A of Chapter 69
21 of the General Statutes, or a fire service district
22 under Article 16 of Chapter 153A of the General
23 Statutes. The rural fire department shall make
24 available to the city not later than 30 days
25 following a written request from the city all
26 information in its possession or control, including
27 but not limited to operational, financial and
28 budgetary information, necessary for preparation of
29 a statement of impact. The rural fire department
30 forfeits its rights under G.S. 160A-49.1 and G.S.
31 160A-49.2 if it fails to make a good faith response
32 within 45 days following receipt of the written
33 request for information from the city, provided
34 that the city's written request so states by
35 specific reference to this section.
- 36 (5) A detailed statement as to how the city classified
37 each lot or tract in the area to be annexed as to
38 use and size. If a population standard was used to
39 qualify the area, the report shall state how the
40 population estimate of the area was determined.

- 1 (6) A statement notifying persons affected by the
2 annexation of their right to appeal under G.S.
3 160A-50.
- 4 (7) A statement showing how the proposed annexation
5 will affect the county's financing and services.
6 This statement shall include changes in county
7 revenues: local sales taxes, shares of beverage
8 taxes, inspection fees, real estate transfer taxes,
9 hotel occupancy taxes, water and sewer revenues,
10 solid waste revenues, and any district property tax
11 revenues where the county board of commissioners
12 levies the tax. The statement shall also include
13 changes in county services: water, sewer, law
14 enforcement, fire, parks and recreation,
15 inspections, land-use regulation, animal control,
16 solid waste collection and disposal, solid waste
17 franchises, rescue services, and emergency medical
18 services. This statement shall be delivered to the
19 clerk of the board of county commissioners at least
20 60 days before the date of any public hearing on
21 any annexation under this Part."

22 Sec. 2. G.S. 160A-48 reads as rewritten:

23 "**§160A-48. Character of area to be annexed.**

24 (a) A municipal governing board may extend the municipal
25 corporate limits to include any area

26 (1) Which meets the general standards of subsection
27 (b), and

28 (2) Every part of which meets the requirements of
29 either subsection (c) or subsection (d).

30 (b) The total area to be annexed must meet the following
31 standards:

32 (1) It must be adjacent or contiguous to the
33 municipality's boundaries at the time the
34 annexation proceeding is begun, except if the
35 entire territory of a county water and sewer
36 district created under G.S. 162A-86(b1) is being
37 annexed, the annexation shall also include any
38 noncontiguous pieces of the district as long as the
39 part of the district with the greatest land area is
40 adjacent or contiguous to the municipality's

- 1 boundaries at the time the annexation proceeding is
2 begun.
- 3 (2) At least one eighth of the aggregate external
4 boundaries of the area must coincide with the
5 municipal boundary.
- 6 (3) No part of the area shall be included within the
7 boundary of another incorporated municipality.
- 8 (c) Part or all of the area to be annexed must be developed
9 for urban purposes. An area developed for urban purposes is
10 defined as any area which meets any one of the following
11 standards:
- 12 (1) Has a total resident population equal to at least
13 two persons for each acre of land included within
14 its ~~boundaries; boundaries,~~ and with respect to any
15 acreage in residential use has a total resident
16 population of at least four persons per acre; or
- 17 (2) Has a total resident population equal to at least
18 ~~one person~~ three persons for each acre of land
19 included within its boundaries, and is subdivided
20 into lots and tracts such that at least ~~sixty~~
21 ~~percent (60%)~~ seventy percent (70%) of the total
22 acreage consists of lots and tracts ~~five~~ three
23 acres or less in size and such that at least sixty-
24 five percent (65%) of the total number of lots and
25 tracts are one acre or less in size; or
- 26 (3) Is so developed that at least sixty percent (60%)
27 of the total number of lots and tracts in the area
28 at the time of annexation are used for residential,
29 commercial, industrial, institutional or
30 governmental purposes, and is subdivided into lots
31 and tracts such that at least sixty percent (60%)
32 of the total acreage, not counting the acreage used
33 at the time of annexation for commercial,
34 industrial, governmental or institutional purposes,
35 consists of lots and tracts ~~five~~ three acres or
36 less in size; or
- 37 (4) Is the entire area of any county water and sewer
38 district created under G.S. 162A-86(b1), but this
39 subdivision only applies to annexation by a
40 municipality if that:

- 1 a. Municipality has provided in a contract with
2 that district that the area is developed for
3 urban purposes; and
4 b. Contract provides for the municipality to
5 operate the sewer system of that county water
6 and sewer district;
7 provided that the special categorization provided
8 by this subdivision only applies if the
9 municipality is annexing in one proceeding the
10 entire territory of the district not already within
11 the corporate limits of a municipality.

12 Any contiguous land in common ownership and common use shall be
13 deemed to be one 'lot or tract' as the term is used in
14 subdivision (2) or (3). An easement for public utility or
15 railroad purposes may be classified as an industrial, commercial,
16 or governmental use, as appropriate, but only as to the extent of
17 the easement, and such classification does not extend to the
18 remainder of the tract solely because of the easement.

19 For purposes of computing resident population density under
20 this subsection, the acreage within streets and roads shall be
21 included in determining the number of acres of land included
22 within the boundaries of the area to be annexed. When an area
23 being annexed under this Part includes streets or roads between
24 developed lots, and the developed lots are also being annexed,
25 the acreage within such streets or roads may not be excluded
26 under subsection (d) of this section from any computation of
27 resident population density under this subsection."

28 (d) In addition to areas developed for urban purposes, a
29 governing board may include in the area to be annexed any area
30 ~~which does not meet the requirements of subsection (c) if such~~
31 ~~area either:~~

- 32 ~~(1) Lies between the municipal boundary and an area~~
33 ~~developed for urban purposes so that the area~~
34 ~~developed for urban purposes is either not adjacent~~
35 ~~to the municipal boundary or cannot be served by~~
36 ~~the municipality without extending services and/or~~
37 ~~water and/or sewer lines through such sparsely~~
38 ~~developed area; or~~
39 ~~(2) Is adjacent, on at least sixty percent (60%) of its~~
40 ~~external boundary, to any combination of the~~

1 ~~municipal boundary and the boundary of an area or~~
2 ~~areas developed for urban purposes as defined in~~
3 ~~subsection (c).~~

4 ~~The purpose of this subsection is to permit municipal governing~~
5 ~~boards to extend corporate limits to include all nearby areas~~
6 ~~developed for urban purposes and where necessary to include areas~~
7 ~~which at the time of annexation are not yet developed for urban~~
8 ~~purposes but areas~~ which constitute necessary land connections
9 between the municipality and areas developed for urban purposes
10 ~~or between two or more areas developed for urban purposes.~~
11 ~~purposes. For purposes of this subsection, 'necessary land~~
12 ~~connection' means an area which makes the area to be annexed~~
13 ~~contiguous to the city, and does not exceed twenty-five percent~~
14 ~~(25%) of the total area to be annexed.~~

15 (e) In fixing new municipal boundaries, a municipal governing
16 board shall, wherever practical, use natural topographic features
17 such as ridge lines and streams and creeks as boundaries, and may
18 use streets and municipal or county limits as boundaries. Some or
19 all of the boundaries of a county water and sewer district may
20 also be used when the entire district not already within the
21 corporate limits of a municipality is being annexed.

22 (f) The area of an abolished water and sewer district shall be
23 considered to be a water and sewer district for the purpose of
24 this section even after its abolition under G.S. 162A-87.2(b)."

25 Sec. 3. G.S. 160A-49(j) is repealed.

26 Sec. 4. G.S. 160A-50 is amended by adding a new
27 subsection to read:

28 "(1) Prior to filing an appeal under this section, a person
29 eligible to appeal must first present a request to the Local
30 Government Commission for an analysis of the municipal governing
31 board's actions under this Part and have received the analysis
32 Filing of such request tolls any applicable deadlines under this
33 Part until the analysis is delivered. The Local Government
34 Commission shall deliver to the municipal governing board and the
35 requestor within 90 days of the request its analysis, and if it
36 finds any defect in the procedure, it may remand the ordinance to
37 the municipal governing board which may correct any defect."

38 Sec. 5. G.S. 160A-50 is amended by adding a new
39 subsection to read:

1 "(m) In any proceeding related to an annexation ordinance
2 appeal under this section, a city shall not state a claim for
3 lost property tax revenue caused by the appeal. Nothing in this
4 Article shall be construed to mean that as a result of an appeal
5 a municipality may assert a claim for property tax revenue lost
6 during the pendency of the appeal."

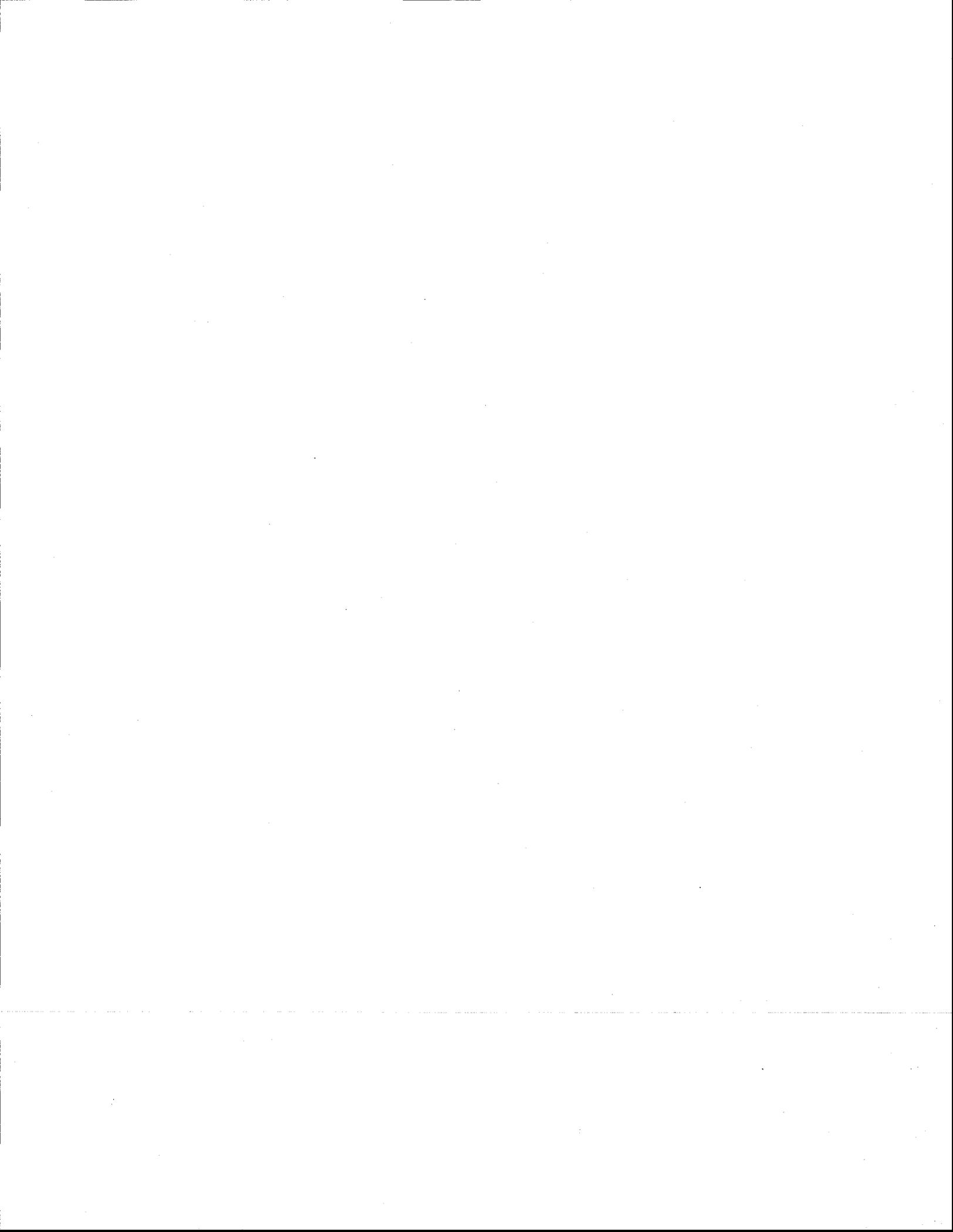
7 Sec. 6. G.S. 160A-53(2) reads as rewritten:

8 "(2) "Used for residential purposes" shall mean any
9 lot or tract ~~five~~ three acres or less in size
10 on which is constructed a habitable dwelling
11 unit."

12 Sec. 7. G.S. 160A-54 is repealed.

13 Sec. 8. This act becomes effective October 1, 1996.

14 Section 5 of this act is effective on and after January 1, 1996.



SUMMARY
Annexation Changes/Larger Cities
Draft 96-RWZ-020D

This bill amends the laws governing annexation by municipalities with a population of 5,000 or more.

SECTION 1 of the bill amends the requirements for the annexation service report. This report is issued by the city after the resolution of intent to annex, and before the public hearing on the annexation proposal. This report is the city's official explanation of its annexation plan, including how it will extend services to the area to be annexed.

Section 1 will change the elements of the service report to require the city to:

- provide for paving all public roads within the area to be annexed within two years, if they are under city control, and meet city standards for paving;
- provide for extension of requested water and sewer lines to individual properties according to city policies, and require city to inform landowner of this opportunity;
- provide a specific statement about how the city plans to extend all required services to the area to be annexed; and
- provide for refund and suspension of property taxes if promised services are not provided within two years.

In addition, the city will be required to explain:

- how it classified each lot of tract in the area to be annexed as to use and size;
- how population estimates (if used) were determined; and
- how the proposed annexation will affect county financing

SECTION 2 of the bill changes the population or development standards areas must meet before they can be considered for annexation

Under current law, land must be "developed for urban purposes" or a necessary land connection to the existing city. Section 2 changes the definition of "developed for urban purposes" to require"

- land counted as residential to have four (now 2) persons per acre, or
- if size of lots and tracts is used to determine if the land is "developed for urban purposes", they must have three (now-one) persons per acre, and 70% (now--60%) of the total acreage must be in lots or tracts of three (now-five) acres or less;

Section 2 also provides that:

- any contiguous land in common ownership and common use will be considered to be "one lot or tract",

- utility easement can no longer be used to classify otherwise undeveloped land as industrial,
- area of streets must be included in determining residential density.

Section 2 also tightens the definition of land categorized as a "necessary land connection" to a developed are, and thus subject to annexation as "an area which makes the are to be annexed contiguous to the city, and does not exceed 25% of the total area to be annexed.

Finally, Section 2 allows the use of municipal or county limits to be used an annexation area boundaries.

SECTION 3. Current law requires a city to pass a resolution of consideration, then at least a year later, a resolution of intent to annex, hold a public hearing, and then enact an annexation ordinance. If the effective date of the annexation is at least a year after the effective date of the annexation ordinance, the city does not have to pass the resolution of consideration. Section 3 of the bill would repeal G.S. 160A-49(j), which allows cities to avoid the resolution of consideration by delaying the effective date of the annexation.

SECTION 4 of the bill would create a requirement for all appeals of annexations based on violation of statutory standards be reviewed in a non-binding proceeding before the local government commission prior to any court action. If any procedural defects were found by the Commission, then the city would have an opportunity to correct them.

SECTION 5 of the bill would forbid cites whose annexation ordinances are challenged under the procedures of Chapter 160A from being subject to a claim or counterclaim for tax revenues lost by the city due to the appeal, and the resulting delay of the annexation.

SECTION 6 conforms the statutes to changes made in Section 2 of the bill.

SECTION 7 of the bill repeals the 5% land area and 10% population tolerances allowed under current law for annexation proposals.

SECTION 8 of the bill makes it effective on October 1, 1996, except Section 5, which would be retroactively effective to January 1, 1996.

LEGISLATIVE PROPOSAL III

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RWZ-021A

THIS IS A DRAFT 22-APR-96 09:37:54

Short Title: Annexation Changes/Smaller Cities. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE LAWS GOVERNING ANNEXATION BY CITIES WITH A
3 POPULATION OF LESS THAN 5,000.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 160A-35 reads as rewritten:
6 "§ 160A-35. Prerequisites to annexation; ability to serve;
7 report and plans.
8 A municipality exercising authority under this Part shall make
9 plans for the extension of services to the area proposed to be
10 annexed and shall, prior to the public hearing provided for in
11 G.S. 160A-37, prepare a report setting forth such plans to
12 provide services to such area. The report shall include:
13 (1) A map or maps of the municipality and adjacent
14 territory to show the following information:
15 a. The present and proposed boundaries of the
16 municipality.
17 b. The proposed extensions of water mains and
18 sewer outfalls to serve the annexed area, if
19 such utilities are operated by the
20 municipality. The water and sewer map must

- 1 bear the seal of a registered professional
2 engineer or a licensed surveyor.
- 3 (2) A statement showing that the area to be annexed
4 meets the requirements of G.S. 160A-36.
- 5 (3) A statement setting forth the plans of the
6 municipality for extending to the area to be
7 annexed each major municipal service performed
8 within the municipality at the time of annexation.
9 Specifically, such plans shall:
- 10 a. Provide for extending police protection, fire
11 protection, solid waste collection and street
12 maintenance services to the area to be annexed
13 on the date of annexation on substantially the
14 same basis and in the same manner as such
15 services are provided within the rest of the
16 municipality prior to annexation. A contract
17 with a rural fire department to provide fire
18 protection shall be an acceptable method of
19 providing fire protection. If a water
20 distribution system is not available in the
21 area to be annexed, the plans must call for
22 reasonably effective fire protection services
23 until such time as waterlines are made
24 available in such area under existing
25 municipal policies for the extension of
26 waterlines. A contract with a private firm to
27 provide solid waste collection services shall
28 be an acceptable method of providing solid
29 waste collection services.
- 30 b. Provide for extension of water mains and sewer
31 lines into the area to be annexed so that
32 property owners in the area to be annexed will
33 be able to secure public water and sewer
34 services according to the policies in effect
35 in such municipality for extending water and
36 sewer lines to individual lots or
37 subdivisions. If the municipality must, at
38 its own expense, extend water and/or sewer
39 mains into the area to be annexed before
40 property owners in the area can, according to

- 1 municipal policies, make such connection to
2 such lines, then the plans must call for
3 contracts to be let and construction to begin
4 on such lines within one year following the
5 effective date of annexation. If water, sewer,
6 or paving services specified in the report for
7 the area to be annexed are not provided within
8 two years of the effective date of the
9 annexation, the owner of the property that has
10 not received the water, sewer, or paving
11 service shall be reimbursed for all ad valorem
12 taxes paid to the municipality, and shall not
13 be liable for future ad valorem taxes until
14 the services are provided.
- 15 c. Set forth the method under which the
16 municipality plans to finance extension of
17 services into the area to be annexed.
- 18 d. Provide for paving all public roads within the
19 area to be annexed, which are both under the
20 control of the city and which meet the city
21 standards for paving, within two years of the
22 effective date of the annexation.
- 23 e. Provide a specific statement as to how the
24 city plans to provide the required services.
- 25 (4) A statement of the impact of the annexation on any
26 rural fire department providing service in the area
27 to be annexed and a statement of the impact of the
28 annexation on fire protection and fire insurance
29 rates in the area to be annexed, if the area where
30 service is provided is in an insurance district
31 designated under G.S. 153A-233, a rural fire
32 protection district under Article 3A of Chapter 69
33 of the General Statutes, or a fire service district
34 under Article 16 of Chapter 153A of the General
35 Statutes. The rural fire department shall make
36 available to the city not later than 30 days
37 following a written request from the city all
38 information in its possession or control, including
39 but not limited to operational, financial and
40 budgetary information, necessary for preparation of

1 a statement of impact. The rural fire department
2 forfeits its rights under G.S. 160A-37.1 and G.S.
3 160A-37.2 if it fails to make a good faith response
4 within 45 days following receipt of the written
5 request for information from the city, provided
6 that the city's written request so states by
7 specific reference to this section.

8 (5) A detailed statement as to how the city classified
9 each lot or tract in the area to be annexed as to
10 use and size.

11 (6) A statement notifying persons affected by the
12 annexation of their right to appeal under G.S.
13 160A-38.

14 (7) A statement showing how the proposed annexation
15 will affect the county's financing and services.
16 This statement shall include changes in county
17 revenues: local sales taxes, shares of beverage
18 taxes, inspection fees, real estate transfer taxes,
19 hotel occupancy taxes, water and sewer revenues,
20 solid waste revenues, and any district property tax
21 revenues where the county board of commissioners
22 levies the tax. The statement shall also include
23 changes in county services: water, sewer, law
24 enforcement, fire, parks and recreation,
25 inspections, land-use regulation, animal control,
26 solid waste collection and disposal, solid waste
27 franchises, rescue services, and emergency medical
28 services. This statement shall be delivered to the
29 clerk of the board of county commissioners at least
30 60 days before the date of any public hearing on
31 any annexation under this Part."

32 Sec. 2. G.S. 160A-36 reads as rewritten:

33 "§ 160A-36. Character of area to be annexed.

34 (a) A municipal governing board may extend the municipal
35 corporate limits to include any area which meets the general
36 standards of subsection (b), and which meets the requirements of
37 subsection (c).

38 (b) The total area to be annexed must meet the following
39 standards:

- 1 (1) It must be adjacent or contiguous to the
2 municipality's boundaries at the time the
3 annexation proceeding is begun, except if the
4 entire territory of a county water and sewer
5 district created under G.S. 162A-86(b1) is being
6 annexed, the annexation shall also include any
7 noncontiguous pieces of the district as long as the
8 part of the district with the greatest land area is
9 adjacent or contiguous to the municipality's
10 boundaries at the time the annexation proceeding is
11 begun.
- 12 (2) At least one eighth of the aggregate external
13 boundaries of the area must coincide with the
14 municipal boundary.
- 15 (3) No part of the area shall be included within the
16 boundary of another incorporated municipality.
- 17 (c) The area to be annexed must be developed for urban
18 purposes. An area developed for urban purposes is defined as any
19 area which is so developed that at least sixty percent (60%) of
20 the total number of lots and tracts in the area at the time of
21 annexation are used for residential, commercial, industrial,
22 institutional or governmental purposes, and is subdivided into
23 lots and tracts such that at least ~~sixty percent (60%)~~ seventy
24 percent (70%) of the total acreage, not counting the acreage used
25 at the time of annexation for commercial, industrial,
26 governmental or institutional purposes, consists of lots and
27 tracts ~~five~~ three acres or less in size. An area developed for
28 urban purposes is also the entire area of any county water and
29 sewer district created under G.S. 162A-86(b1), but this sentence
30 only applies to annexation by a municipality if that:
- 31 (1) Municipality has provided in a contract with that
32 district that the area is developed for urban
33 purposes; and
- 34 (2) Contract provides for the municipality to operate
35 the sewer system of that county water and sewer
36 district;
- 37 provided that the special categorization provided by this
38 sentence only applies if the municipality is annexing in one
39 proceeding the entire territory of the district not already
40 within the corporate limits of a municipality. Any contiguous

1 land in common ownership and common use shall be deemed to be one
2 'lot or tract' as the term is used in this subsection. An
3 easement for public utility or railroad purposes may be
4 classified as an industrial, commercial, or governmental use, as
5 appropriate, buy only as to the extent of the easement, and such
6 classification does not extend to the remainder of the tract
7 solely because of the easement.

8 (d) In fixing new municipal boundaries, a municipal governing
9 board shall, wherever practical, use natural topographic features
10 such as ridge lines and streams and creeks as boundaries, and may
11 use streets and municipal or county limits as boundaries. Some or
12 all of the boundaries of a county water and sewer district may
13 also be used when the entire district not already within the
14 corporate limits of a municipality is being annexed.

15 (e) The area of an abolished water and sewer district shall be
16 considered to be a water and sewer district for the purpose of
17 this section even after its abolition under G.S. 162A-87.2(b)."

18 Sec. 3. G.S. 160A-37(j) is repealed.

19 Sec. 4. G.S. 160A-38 is amended by adding a new
20 subsection to read:

21 "(k) Prior to filing an appeal under this section, a person
22 eligible to appeal must first present a request to the Local
23 Government Commission for an analysis of the municipal governing
24 board's actions under this Part and have received the analysis.
25 Filing of such request tolls any applicable deadlines under this
26 Part until the analysis is delivered. The Local Government
27 Commission shall deliver to the municipal governing board and the
28 requestor within 90 days of the request its analysis, and if it
29 finds any defect in the procedure, it may remand the ordinance to
30 the municipal governing board which may correct any defect."

31 Sec. 5. G.S. 160A-38 is amended by adding a new
32 subsection to read:

33 "(l) In any proceeding related to an annexation ordinance
34 appeal under this section, a city shall not state a claim for
35 lost property tax revenue caused by the appeal. Nothing in this
36 Article shall be construed to mean that as a result of an appeal
37 a municipality may assert a claim for property tax revenue lost
38 during the pendency of the appeal."

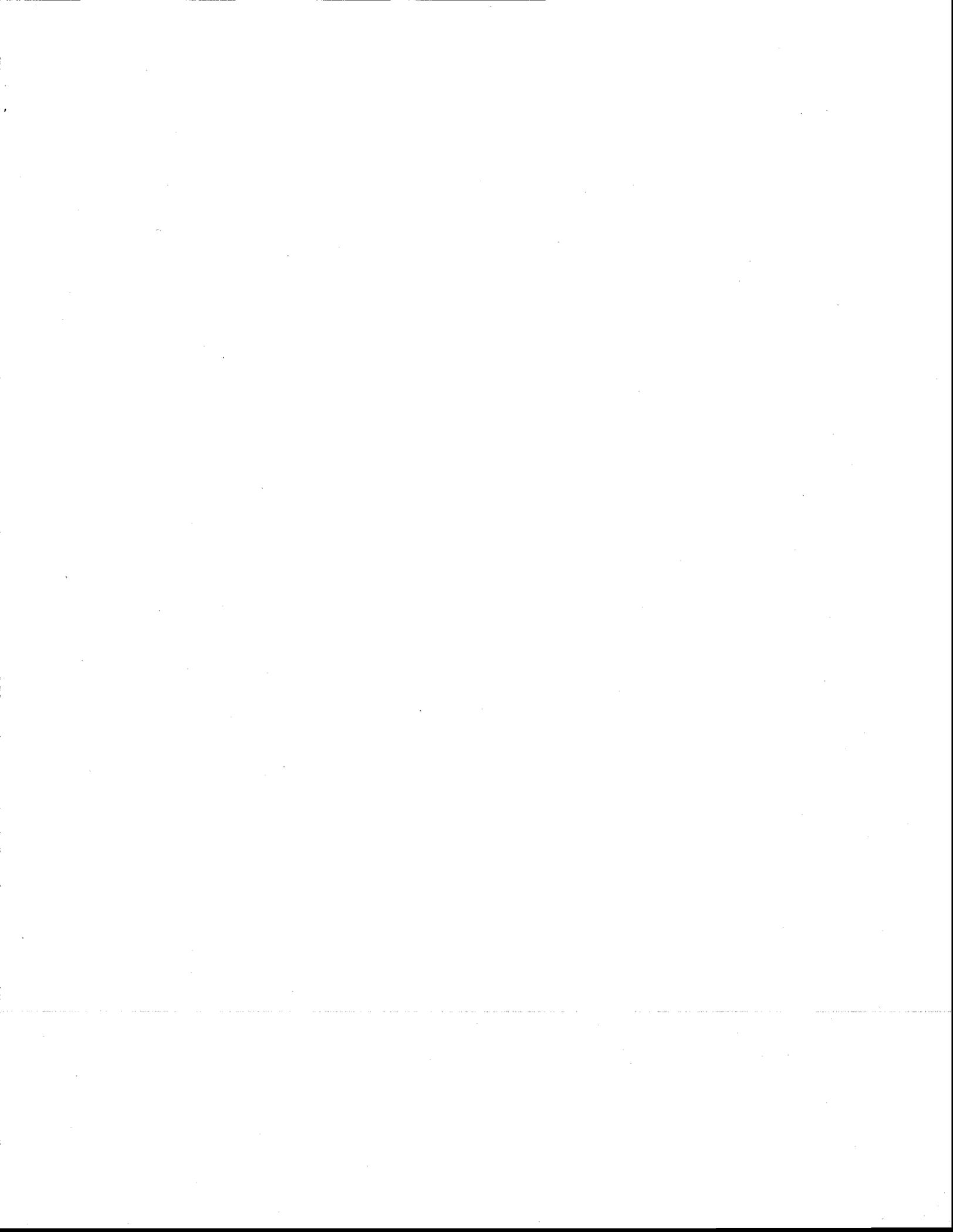
39 Sec. 6. G.S. 160A-41(2) reads as rewritten:

1 "(2) "Used for residential purposes" shall mean any
2 lot or tract ~~five~~ three acres or less in size
3 on which is constructed habitable dwelling
4 unit.

5 Sec. 7. G.S. 160A-42 is repealed.

6 Sec. 8. This act becomes effective October 1, 1996.

7 Section 5 of this act is effective on and after January 1, 1996.



SUMMARY
Annexation Changes/Smaller Cities
Draft 96-RWZ-021A

This bill amends the laws governing annexation by municipalities with a population of less than 5,000.

SECTION 1 of the bill amends the requirements for the annexation service report. This report is issued by the city after the resolution of intent to annex, and before the public hearing on the annexation proposal. This report is the city's official explanation of its annexation plan, including how it will extend services to the area to be annexed.

Section 1 will change the elements of the service report to require the city to:

- provide for paving all public roads within the area to be annexed within two years, if they are under city control, and meet city standards for paving;
- provide a specific statement about how the city plans to extend all required services to the area to be annexed; and
- provide for refund and suspension of property taxes if promised services are not provided within two years.

In addition, the city will be required to explain:

- how it classified each lot or tract in the area to be annexed as to use and size; and
- how the proposed annexation will affect county financing

SECTION 2 of the bill changes the population or development standards areas must meet before they can be considered for annexation

Under current law, land must be "developed for urban purposes". Section 2 changes the definition of "developed for urban purposes" to require"

- 70% (now--60%) of total acreage must be in lots or tracts of three (now-five) acres or less.

Section 2 also provides that:

- any contiguous land in common ownership and common use will be considered to be "one lot or tract",
- utility easement can no longer be used to classify otherwise undeveloped land as industrial,
- area of streets must be included in determining residential density.

Finally, Section 2 allows the use of municipal or county limits to be used as an annexation area boundaries.

SECTION 3. Current law requires a city to pass a resolution of consideration, then at least a year later, a resolution of intent to annex, hold a public hearing, and

then enact an annexation ordinance. If the effective date of the annexation is at least a year after the effective date of the annexation ordinance, the city does not have to pass the resolution of consideration. Section 3 of the bill would repeal G.S. 160A-37(j), which allows cities to avoid the resolution of consideration by delaying the effective date of the annexation.

SECTION 4 of the bill would create a requirement for all appeals of annexations based on violation of statutory standards be reviewed in a non-binding proceeding before the local government commission prior to any court action. If any procedural defects were found by the Commission, then the city would have an opportunity to correct them.

SECTION 5 of the bill would forbid cities whose annexation ordinances are challenged under the procedures of Chapter 160A from being subject to a claim or counterclaim for tax revenues lost by the city due to the appeal, and the resulting delay of the annexation.

SECTION 6 conforms the statutes to changes made in Section 2 of the bill.

SECTION 7 of the bill repeals the 5% land area and 10% population tolerances allowed under current law for annexation proposals.

SECTION 8 of the bill makes it effective on October 1, 1996, except Section 5, which would be retroactively effective to January 1, 1996.

LEGISLATIVE PROPOSAL IV

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

96-RWZ-016B

THIS IS A DRAFT 22-APR-96 09:24:22

Short Title: Mail ETJ notice/Hearing on appointments. (Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE FIRST CLASS MAIL NOTICE TO ALL PROPERTY OWNERS
3 IN AN AREA PROPOSED FOR ADDITION TO A MUNICIPALITY'S
4 EXTRATERRITORIAL PLANNING AND ZONING JURISDICTION, PROPORTIONAL
5 REPRESENTATION FOR RESIDENTS OF THE ETJ ON THE PLANNING AGENCY,
6 AND A HEARING BEFORE COUNTY APPOINTMENT OF REPRESENTATION TO
7 THE PLANNING AGENCY.
8 The General Assembly of North Carolina enacts:
9 Section 1. G.S. 160A-360 is amended by adding a
10 subsection to read:
11 "(a1) Any municipality planning to exercise extraterritorial
12 jurisdiction under this Article shall notify the owners of all
13 parcels of land proposed for addition to the area of
14 extraterritorial jurisdiction, as shown of the county tax
15 records. The notice shall be sent by first class mail to the
16 last addresses listed for affected property owners in the county
17 tax records. The notice shall inform the landowner of the effect
18 of the extension of extraterritorial jurisdiction, of the
19 landowner's right to participate in a public hearing prior to
20 adoption of any ordinance extending the area of extraterritorial

1 jurisdiction, as provided in G.S. 160A-364, and the right of all
2 residents of the area to apply to the Board of County
3 Commissioners to serve as a representative on the planning agency
4 and the board of adjustment, as provided in G.S. 160A-362. The
5 notice shall be mailed at least four weeks prior to the public
6 hearing. The person or persons mailing the notices shall certify
7 to the city council that the notices were sent by first class
8 mail, and the certificate shall be deemed conclusive in the
9 absence of fraud."

10 Sec. 2. G.S. 160A-362 reads as rewritten:

11 "§160A-362. Extraterritorial representation.

12 When a city elects to exercise extraterritorial zoning or
13 subdivision-regulation powers under G.S. 160A-360, it shall in
14 the ordinance creating or designating its planning agency or
15 agencies provide a means of proportional representation based on
16 population for residents of the extraterritorial area to be
17 regulated. Representation shall be provided by appointing
18 residents at least one resident of the area to the planning
19 agency and the board of adjustment that makes recommendations or
20 grants relief in these matters. Membership of joint municipal
21 county planning agencies or boards of adjustment may be appointed
22 as agreed by counties and municipalities. Any advisory board
23 established prior to July 1, 1983, to provide the required
24 extraterritorial representation shall constitute compliance with
25 this section until the board is abolished by ordinance of the
26 city. The representatives on the planning agency and the board of
27 adjustment shall be appointed by the board of county
28 commissioners with jurisdiction over the area. When selecting a
29 new representative to the planning agency or to the board of
30 adjustment, the board of county commissioners shall hold a public
31 hearing on the selection. A notice of the hearing shall be given
32 once a week for two successive calendar weeks in a newspaper
33 having general circulation in the area. The board of county
34 commissioners shall select appointees only from those who apply
35 at or before the public hearing. The county shall make the
36 appointments within 45 days following the public hearing. Once a
37 city provides proportional representation, no power available to
38 a city under G.S. 160A-360 shall be ineffective in its
39 extraterritorial area solely because county appointments have not
40 yet been made. If there is an insufficient number of qualified

1 residents of the area to meet membership requirements, the board
2 of county commissioners may appoint as many other residents of
3 the county as necessary to make up the requisite number. When the
4 extraterritorial area extends into two or more counties, each
5 board of county commissioners concerned shall appoint
6 representatives from its portion of the area, as specified in the
7 ordinance. If a board of county commissioners fails to make these
8 appointments within 90 days after receiving a resolution from the
9 city council requesting that they be made, the city council may
10 make them. If the ordinance so provides, the outside
11 representatives may have equal rights, privileges, and duties
12 with the other members of the agency to which they are appointed,
13 regardless of whether the matters at issue arise within the city
14 or within the extraterritorial area; otherwise they shall
15 function only with respect to matters within the
16 extraterritorial area."

17 Sec. 3. This act becomes effective October 1, 1996.



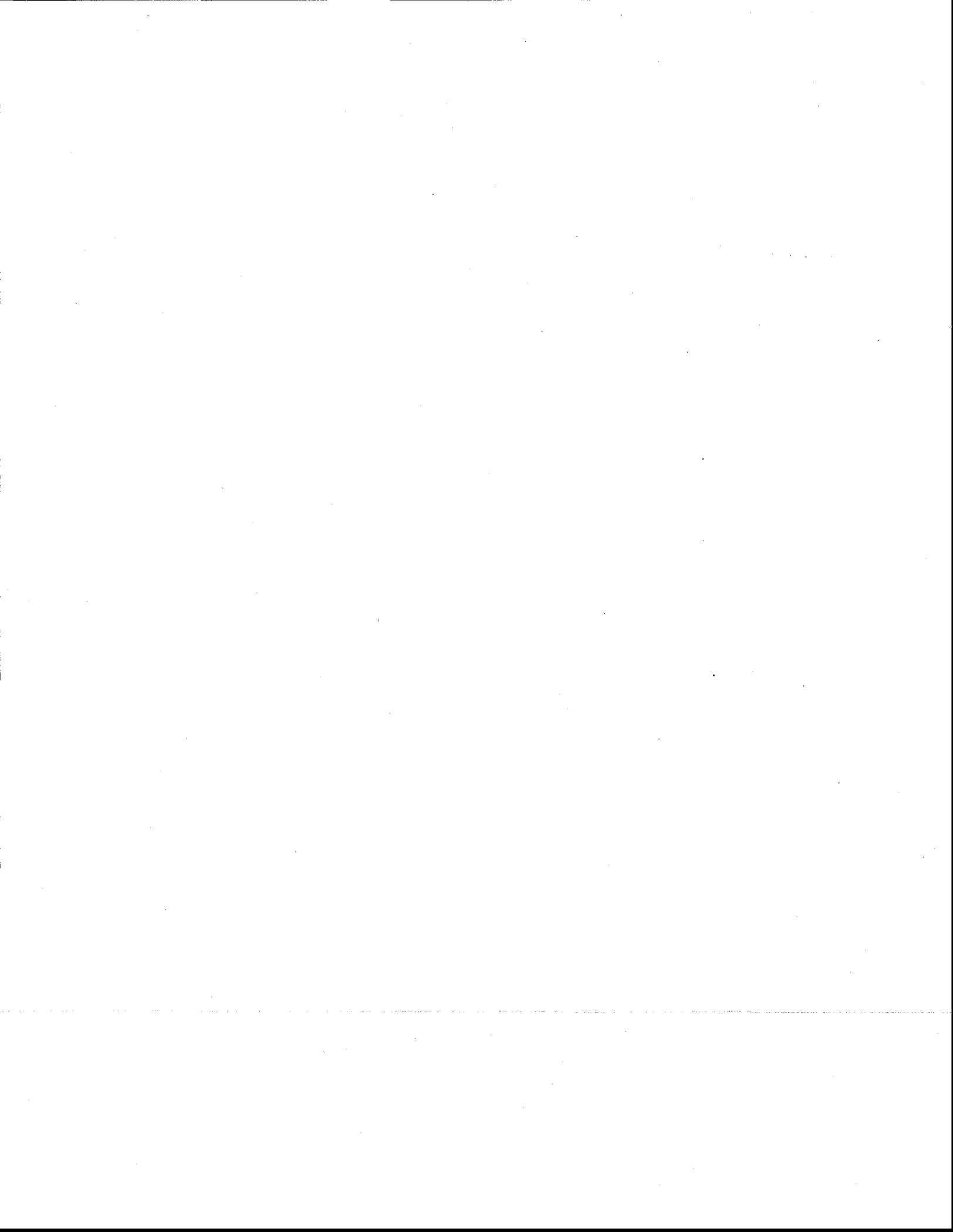
SUMMARY
Mail ETJ Notice/Hearing on appointments
Draft 96-RWZ-016B

This bill amends the law concerning the extraterritorial zoning and planning powers of cities.

SECTION 1 of the bill requires cities to notify property owners to be added to the ETJ by first class mail. The notice is required to include an explanation of the effect of extension of extraterritorial zoning and planning powers by the city, the landowner's right to participate in a public hearing, and the right to apply to serve as an ETJ representative on the planning board or board of adjustment.

SECTION 2 of the bill requires cities to provide for proportional representation on planning boards and boards of adjustment, and to have a public hearing concerning any new appointments to these boards.

SECTION 3 of the bill provides that it would become effective October 1, 1996



RECOMMENDATION V
Deferral of water and sewer assessments until hook-up

The Committee considered the concept of deferral of water and sewer assessments on property until the service is actually provided. Although the Committee declined to recommend specific legislation on this topic, the Committee endorses this concept, and encourages municipalities to consider adopting it.